



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0672]**

**RIN 1625-AA00**

### **Safety Zone; St. Norbert College Fireworks, Fox River, De Pere, WI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Fox River in De Pere, WI for the St. Norbert College Fireworks event. This temporary safety zone is necessary to protect spectators, mariners, vessels, and property from potential hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan.

**DATES:** This rule is effective from 7:30 p.m. through 9 p.m. on August 25, 2019

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0672 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Chief Petty Officer Kyle Weitzell, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-747-7148, email [Kyle.W.Weitzell@uscg.mil](mailto:Kyle.W.Weitzell@uscg.mil).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive the final details of this fireworks display in sufficient time to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard’s ability to protect the public, mariners, vessels, and property from the hazards associated with this event which is scheduled on August 25, 2019.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to public interest because waiting for an NPRM and final publication would inhibit the Coast Guard’s ability to protect spectators and vessels from the potential safety hazards associated with a fireworks display.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Lake Michigan has determined that potential hazards

associated with the St. Norbert College Fireworks display on August 25, 2019, will be a safety concern for anyone within a 500-foot radius of a vessel used to launch fireworks in the Fox River in De Pere, WI at coordinates 44° 26' 55"N, 088° 03' 50"W. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone from 7:30 p.m. through 9 p.m. on August 25, 2019 for the waters of the Fox River in De Pere, WI at coordinates 44° 26' 55"N, 088° 03' 50"W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters from falling embers and fireworks debris during the St. Norbert College Fireworks display. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP or a designated on-scene representative. The COTP or a designated on-scene representative may be contacted via VHF Channel 16.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs

through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the characteristics of the safety zone. The safety zone created by this rule will be relatively small and is designed to minimize its impact on navigable waters. This rule will prohibit entry into certain navigable waters in the Fox River, Du Pere, WI not to exceed one and one half hour in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port Lake Michigan.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996

(Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A Record of Environmental Consideration supporting this determination will be available in the docket where indicated under **ADDRESSES** once it is completed.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T09-0672 to read as follows:

#### **§ 165.T09-0672 Safety Zone; St. Norbert College Fireworks, Fox River, De Pere, WI.**

(a) Location. All navigable waters of the Fox River in De Pere, WI within 500 feet of a vessel used to launch fireworks at coordinates 44° 26' 55"N, 088° 03' 50"W.

(b) Enforcement Period. The regulated area described in paragraph (a) will be enforced from 7:30 p.m. through 9 p.m. on August 25, 2019.

(c) Regulations. (1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP

or a designated on-scene representative.

(3) The “on-scene representative” of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: August 2, 2019.

L. M. Lusk,  
COMMANDER, U.S. Coast Guard,  
Acting Captain of the Port Sector Lake Michigan.  
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